IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1456 of 2005

Prakash Sadashiv Jagtap .. Petitioner

versus

Municipal Corporation of Gr.

Bombay and others .. Respondents

...

Mr.S.P. Ghaste for the petitioner.

Mr.P.M. Palshikar a/w Mrs.Archana Joshi for the respondent.

CORAM : D.G. KARNIK, J

DATED : 26th June 2006.

ORAL JUDGEMENT :

1. By this petition, the petitioner challenges the order of termination of his service dated 17th

August 2002 from the post of a junior engineer as also the order dated 4th June 2006 passed by the appellate authority confirming the order of dismissal.

2. The petitioner was appointed as a Jr.Engineer by Municipal Corporation of Greater Bombay (respondent no.1) in December 1992. Respondent no.1 discovered some irregularities committed by the petitioner in the year 1996-97. The petitioner and some other officers had issued work orders to the contractors without taking appropriate sanction from the Ward officers. The petitioner and other officers were therefore chargesheeted and disciplinary enquiry was held against them. Pending enquiry, the petitioner was suspended from the service by an order dated 16th September 1997. The petitioner was found guilty in the departmental enquiry. The enquiry officer recommended that the petitioner be reduced by two stages in the time scale of the post of Jr. Engineer. He further recommended that petitioner should not earn any increment for one year. The competent authority i.e. disciplinary authority agreed with the finding of the enquiry officer that the petitioner was guilty, but disagreed with the punishment proposed by the enquiry officer. He was of the opinion that the punishment should be by

way of dismissal from service. The competent authority accordingly issued a show cause notice to the petitioner requiring him to show cause why he should not be dismissed from service. After considering the reply of the petitioner, by the order dated 17th August 2002. The competent authority passed the order dismissing the petitioner from municipal service as a measure of punishment. Aggrieved petitioner filed an appeal before the appellate authority which dismissed the same by the order dated 24th January 2003. The petitioner challenged the order of the appellate authority in this court by filing a Writ Petition, bearing WP no.2468 of 2003. By the order dated 7th January 2003, this Court set aside the appellate order on the sole ground of it not being a speaking order and remanded the matter back to the appellate authority for fresh consideration by passing a speaking order. This Court left open all other contentions which were raised in the petition. After the remand, the petitioner was given a fresh hearing and by the order dated 4th June 2004, the appellate authority by a speaking order, dismissed the appeal and confirmed the order of dismissal. That order is impugned in this petition.

3. Counsel for the petitioner raised four

challenges to the appellate order dated 4th June 2004. He firstly submitted that the second order dated 4th June 2004 was also not truly a speaking order in as much as the contentions raised by the petitioner were not properly considered by the appellate authority. He secondly submitted that the original order of dismissal was passed by the competent authority viz. Addl. Municipal Commissioner. Though the appeal was filed before the Municipal Commissioner who was the appellate authority, he transferred and assigned the appeal to another Addl. Municipal Commissioner for hearing who heard and decided it. Thus, the competent authority and appellate authority were persons of the same rank and the Municipal Commissioner erred in delegating the power of hearing and deciding the appeal to another person of the same rank. The decision of the appellate authority was therefore bad in law and void. Thirdly, the counsel submitted that the decision of the enquiry officer was erroneous and perverse and the competent authority erred in accepting the finding of guilt recorded by the enquiry officer and passing the order of dismissal. Lastly, the counsel submitted that the punishment imposed was disproportionate and should have been set aside by the appellate authority.

4. As regards the first contention that the impugned order,is not a speaking order, I have gone through the order with the help of the learned counsel for the petitioner. The appellate authority has noted all the contentions raised by the petitioner in sub-paragraph nos.(a) to (h) of its order. The appellate authority has thereafter considered those grounds and has come to a conclusion that the order passed by competent authority did not suffer from any illegality. It is true that the appellate authority has not framed points for determination and has also not referred to the points raised by the petitioner serially. However, on that reason alone, the order cannot be faulted. It must be remembered that the competent authority as well as appellate authority are manned by administrative officers as opposed to judicial officers trained to write judgements by framing issues (points for determination) and giving reasons separately for the decision on each issue. Merely because all the points are raised are considered together would not make the order a non speaking order. Relevant points raised by the petitioner have been dealt with in the appellate order. The contention that the appellate order is a non speaking order is therefore rejected.

5. The order of dismissal dated 17th August 2002 has been passed by the Addl. Municipal Commissioner. Counsel for the petitioner did not canvass before me that the Addl.Municipal Commissioner was not the competent authority to pass the order of dismissal. However, his grievance was that an appeal against the order of Addl. Municipal Commissioner lay, under the applicable service rules to the Municipal Commissioner and the Municipal Commissioner ought to have decided the appeal himself. The Municipal Commissioner instead of hearing and deciding appeal by himself, allotted the appeal to another Addl.Municipal Commissioner for hearing and decision who heard and decided it. That order is, therefore, without jurisdiction and the Municipal Commissioner had no jurisdiction to transfer the appeal filed before him to another Addl. Municipal Commissioner for hearing and decision. In order to appreciate this contention, it would be necessary to refer to the relevant rules relating to the departmental enquiry applicable to the employees of Mumbai Municipal Corporation. Counsel for the petitioner handed over to me xerox copy of the rules relating disciplinary enquiries and invited my attention to Rule 53 which reads thus:

> 53) An appeal against the orders passed by a competent authority shall ordinarily lie to the authority next higher to such competent authority. If the order of punishment is passed by the Head of the Department, an appeal may be made to the Dy.Municipal Commissioner in-charge of that Department. Where the order is passed by the D.M.C, the appeal may be made to the Addl. Municipal Commissioner who may either disposed of it himself or direct another D.M.C. to D.M.Cs to disposed of it. Where the order is passed by the Addl. Municipal Commissioner, the appeal may be made to the Municipal Commissioner who may disposed of it himself or direct another Addl. Municipal Commissioner or two Addl.Municipal Commissioners or two Dy.Municipal Commissioners to dispose of it. Where the order is passed by the Municipal Commissioner, he may direct Addl. Municipal Commissioner or two Addl. Municipal Commissioners or two Dy. Municipal Commissioners to dispose of it. Every appeal must be submitted through the officer passing the order of punishment and through the Head of the Department.

6. Counsel for the petitioner strongly relied upon the first sentence of Rule 53 which says that an appeal against an order passed by the competent authority would lie to the authority next higher to such competent authority. Counsel submitted that officer higher in rank to the Additional Municipal

Commissioner is the Commissioner. Therefore, the appeal ought to have been heard and decided by the Municipal Commissioner himself. In my view, submission of the counsel is without merit. The opening words of Rule 53 itself say that appeal against an order passed by the competent authority shall ordinarily lie to the authority next higher in rank to such competent authority. The third sentence what Rule 53 is very clear which states that where an order is passed by the Addl. Municipal Commissioner, the appeal may be made to the Municipal Commissioner who may dispose of it himself or direct another Addl.Municipal Corporation or two Addl.Municipal Commissioners or two Dy. Municipal Commissioners to dispose it of. The rule clearly provides that an appeal against an order passed by Addl.Municipal Commissioner would lie to i.e. would be filed to Municipal Commissioner; the Municipal Commissioner may either dispose of the appeal by himself or may allot it to another Addl.Municipal Commissioner or a bench of two Addl.Municipal Commissioners or a bench of two Dy.Municipal Commissioners. Rule makes a clear distinction between filing of an appeal which is to be made to the Municipal Commissioner and hearing of the appeal which may be heard by the Municipal

Commissioner himself or may be allotted by him to other authorities mentioned in the rank for hearing. The rule must be read as a whole and the first sentence of the rank cannot be read in isolation and without reference to the sentences following it. In my considered view, the rule clearly provides that the appeal against an order of Addl. Municipal Commissioner could have allotted by Municipal Commissioner of another Addl. Municipal Commissioner. Consequently, the action of the Municipal Commissioner in allotting the appeal against the order of the Addl. Municipal Corporation (City) to another Addl.Municipal Commissioner viz. Additional Municipal Commissioner (Personnel) was permissible by the rules and the Addl.Municipal Commissioner (Personnel) was entitled to hear and dispose of the said appeal.

7. Counsel contended that the findings recorded by the enquiry officer were perverse. A finding recorded by enquiry officer would be perverse if it is based upon no evidence or if the enquiry officer has or rejected admissible evidence or admitted the evidence not admissible in law. The finding would also be perverse if the finding is such that if no Tribunal acting reasonably would reach that

conclusion. Counsel for the petitioner was unable to point out that any admissible evidence was rejected or that any inadmissible evidence was admitted. The enquiry officer after consideration of all the evidence adduced before him has come to the conclusion about the guilt of the petitioner. The finding is a possible finding of fact based on appreciation of evidence and cannot be said to be in any way perverse.

8. Counsel lastly submitted that punishment awarded was disproportionate to the misconduct. He submitted that in his report, the enquiry officer had himself recommended punishment only of reduction in the pay by two stages in the time scale and withholding of one increment. The disciplinary authority erred in awarding punishment higher than that. It is settled principle of law that a disciplinary authority is not bound by the recommendations regarding punishment made by enquiry officer. The disciplinary authority is entitled to independently consider the matter and reach its own conclusion as to the quantum of punishment. In the present case, the charges were serious. The petitioner and few other officers had issued work orders to the contractors without taking the

appropriate sanctions as was required by the internal rules of the corporation. This had resulted into huge financial loss of Rs.41 lacs to the municipal corporation. In the circumstances, the discretion exercised by the competent authority disciplinary authority in imposing the punishment of dismissal cannot be said to be arbitrary or grossly disproportionate to the misconduct. Punishment therefore, cannot be interfered with in exercise of the writ jurisdiction. For these reasons there is no merit in the petition, which is hereby dismissed.

9. In the facts and circumstances of the case, parties shall bear and pay their own costs.

(D.G. KARNIK, J)